

Q&As provide FFCRA wage-hour information for employers

On August 3, the Labor Department's Wage and Hour Division announced new guidance for employers with certain federal contracts regarding paid sick leave or expanded family and medical leave under the Families First Coronavirus Relief Act (FFCRA).

The [guidance](#), which features two questions and answers, provides compliance assistance to employers with service contracts with the federal government covered by the Service Contract Act and federal construction contracts covered by the Davis-Bacon Act:

1. *I have a service contract with the federal government covered by the Service Contract Act (SCA), and my employees work under a wage determination that contains a health and welfare fringe benefit rate. Do I have to pay my employees the SCA health and welfare fringe benefit rate in addition to the SCA prevailing wage rate when they take paid sick leave or expanded family and medical leave? What if my employees are covered by Executive Order (EO) 13706, which requires paid sick leave?*

Answer: No, not unless they are taking the Families First Coronavirus Response Act (FFCRA) leave concurrently with leave provided under the SCA or EO 13706. If your employee is taking paid sick leave under FFCRA for reasons related to COVID-19, you are required to pay the employee based on the higher of the employee's regular rate of pay, the federal minimum wage in effect under the Fair Labor Standards Act, or the applicable State or local minimum wage; if your employee is taking expanded family and medical leave, you are similarly required to pay based on the employee's regular rate.

The SCA health and welfare rate is not included in the regular rate of pay. Thus, to the extent you have been paying cash in lieu of fringe benefits, you would not be required to pay the health and welfare fringe benefit rate for leave taken pursuant to the FFCRA. However, to the extent you have been providing health insurance to the employee, you must maintain the employee's health insurance while the employee is taking FFCRA paid leave as if the employee were working. [Questions 7 and 8](#) provide guidance regarding pay requirements under the FFCRA.

However, unless otherwise specified in the wage determination, you must provide health and welfare payments for all hours paid for under the SCA, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year on each contract. Thus, you are required to provide health and welfare payments to an employee who is using existing paid vacation, sick leave, or holiday hours under the SCA at the same time he or she is using expanded family and medical leave under the FFCRA.

Similarly, if your employees are using expanded family and medical leave under the FFCRA concurrently with paid sick leave under EO 13706, you must pay any health and welfare benefit, or monetary equivalent, required by the EO, for the hours paid under the EO.

2. *I have a federal construction contract covered by the Davis-Bacon Act. Do I have to include fringe benefits when I pay employees paid sick leave or expanded family and medical leave under the FFCRA? What if my employees are covered by Executive Order (EO) 13706, which requires paid sick leave?*

Answer: No, not unless they are taking the FFCRA leave concurrently with leave provided under the SCA or EO 13706. If your employee is taking paid sick leave under the FFCRA for reasons related to COVID-19, you are required to pay the employee based on the higher of the employee's regular rate of pay, the federal minimum wage in effect under the FLSA, or the applicable State or local minimum wage; if your employee is taking expanded family and medical leave, you are similarly required to pay the employee based on the employee's regular rate.

Davis-Bacon fringe benefits are not included in the regular rate. Thus, to the extent you have been paying cash in lieu of fringe benefits, you would not be required to pay the fringe benefit rate for leave taken pursuant to the FFCRA. However, to the extent you have been providing health insurance to the employee, you must maintain the employee's health insurance while the employee is taking FFCRA paid leave as if the employee were working. Similarly, if your employees are using expanded family and medical leave under the FFCRA concurrently with paid sick leave under EO 13706, you must pay any fringe benefits, or monetary equivalent, required by the EO, for the hours paid under the EO.

The WHD also pointed to [additional information](#) on common issues employers and employees face when responding to COVID-19 and its effects on wages and hours.